

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:08CR257 HEA
)	
DERRICK BERNARD ALLEN,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Memorandum and Recommendation, [Doc. No. 100], of United States Magistrate Judge Terry I. Adelman, pursuant to 28 U.S.C. § 636(b). Judge Adelman again recommends that Defendant's Motion to Suppress Evidence, [Doc. 31], be denied. Defendant has filed Objections to the Memorandum and Recommendation.

When a party objects to a magistrate judge's report and recommendation, the Court must conduct a *de novo* review of the portions of the report, findings, or recommendations to which the party objected. See *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir.2003) (citing 28 U.S.C. § 636(b)(1)). This includes a *de novo* review of the magistrate's findings of fact, including any credibility determinations. *Id.* The court has reviewed the entire record, including listening to

the audio recording of the hearing held on September 2, 2009.

Discussion

On May 21, 2009, Judge Adelman recommended that Defendant's Motion to Suppress Evidence be denied. The Court adopted Judge Adelman's recommendation on June 5, 2009. Defendant subsequently requested a supplemental hearing on the motion, based on information Defendant's counsel had recently obtained. Judge Adelman held a supplemental hearing on September 2, 2009. At this hearing, evidence was heard from Eulus Stewart. The parties also presented argument. In reaching his recommendation, Judge Adelman also reviewed the audio tape of the police radio communications in this case.

Defendant reincorporates all allegations, argument, legal principles, and specific grounds for objection as he set forth in his previous objections to Judge Adelman's Memorandum and Recommendation of May 21, 2009. In its Opinion adopting Judge Adelman's Recommendation, this Court dispelled those objections with its analysis. That same analysis applies herein. Moreover, this Court agrees with Judge Adelman that Mr. Stewart's testimony fails to undermine that of the police officers involved in Defendant's arrest.

With respect to the audio recording communication, the Court also agrees, based on Judge Adelman's analysis of the recording, that the radio communications

do not materially affect or change the previous analysis and conclusions reached by Judge Adelman and the undersigned.


Conclusion

Having conducted a *de novo* review of the Motion to Suppress and the record before the Court, Defendant's objections are overruled. The Memorandum and Recommendation contains a very thorough analysis of the facts presented at the supplemental hearing. This Court, therefore will adopt Judge Adelman's Recommendation.

Accordingly,

IT IS ORDERED that Defendant's Motion to Suppress Evidence, [Doc. 31], is **DENIED**.

Dated this 10th day of November, 2009.

A handwritten signature in cursive script, appearing to read "Henry Edward Autrey", is written over a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE